

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

GUMAA HASSABALLA,)	NO. LACV089439
)	
Plaintiff,)	PLAINTIFF'S PROPOSED JURY
)	INSTRUCTIONS
vs.)	
)	
WOODLAND SQUARE)	
INVESTMENTS, L.L.C.,)	
)	
Defendant.)	
)	

COMES NOW the Plaintiff, Gumaa Hassaballa, and submits to the Court the attached Proposed Jury Instructions and Verdict Form and requests that they be submitted to the jury at the time of trial.

Plaintiff has included herein a verdict form and certain instructions regarding the comparative fault defense raised by Defendant. Plaintiff does not agree or concede that there is any evidence of comparative fault or that comparative fault should be submitted as a defense. The proposed verdict and instructions regarding comparative fault are submitted because Defendant's Answer alleges that defense. Plaintiff expressly reserves the right to object to submitting to the jury the comparative fault issue and to move for directed verdict thereon. Plaintiff also requests that the following uniform Iowa Civil Jury Instructions be given: 100.2, 100.3, 100.4, 100.5, 100.6, 100.9, 100.11, 100.12, 100.13, 100.14, 100.18, 100.21, 100.23, 200.30, 200.37, 200.38, 210.1, 210.2, 210.3, 210.4, 300.1, 400.1, 400.2, 400.3, 700.1, 700.2, 700.3, 700.3A, and 700.11.



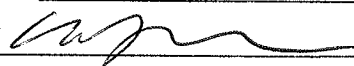
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this document was served upon counsel of record for each party to the action on 3/8/19 by:

- ☒ Electronically via ECF for ECF registrants
☐ U.S. Mail _____
☐ Fax _____
☐ Fed Ex _____
☐ Hand Delivered _____
☐ Other _____



Statement of The Case.

Members of the Jury: In this case plaintiff Gumaa Hassaballa claims his landlord, the defendant Woodland Square Investments L.L.C., was negligent in certain particulars and its negligence caused him bodily injury. The defendant Woodland Square Investments, L.L.C. denies it was negligent and claims the plaintiff was negligent and his negligence cause his injury.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

INSTRUCTION NO. _____

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. _____

Whenever a party must prove something, they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence.

Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. _____

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. _____

Certain Testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. _____

During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. _____

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. _____

You have heard evidence claiming Jeffrey Niemeier made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

INSTRUCTION NO. _____

You have heard evidence claiming Jeffrey Niemeier made statements before this trial while under oath which were inconsistent with what Jeffrey Niemeier said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe Jeffrey Niemeier. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

INSTRUCTION NO. _____

You have heard evidence claiming Gumaa Hassaballa made statements before this trial while under oath and while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if Mr. Hassaballa had made it under oath during the trial.

If you find such a statement was made and was inconsistent with Gumaa Hassaballa's testimony during the trial you may also use the statement as a basis for disregarding all or any part of Mr. Hassaballa's testimony during the trial but you are not required to do so. You should not disregard Mr. Hassaballa's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. _____

You have heard evidence claiming [name of witness] made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

INSTRUCTION NO. _____

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. _____

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. _____

In these instructions I will be using the term "fault." Fault means one or more acts or omissions towards the person of another which constitutes negligence.

INSTRUCTION NO. _____

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

INSTRUCTION NO. _____

You must decide whether the claimed harm to plaintiff is within the scope of defendant's liability. The plaintiff's claimed harm is within the scope of a defendant's liability if that harm arises from the same general types of danger that the defendant should have taken reasonable steps to avoid.

Consider whether repetition of defendant's conduct makes it more likely harm of the type plaintiff claims to have suffered would happen to another. If not, the harm is not within the scope of liability.

INSTRUCTION NO. ____

A landlord has a duty to do whatever is reasonable and necessary to put and keep leased premises in a fit and habitable condition. This duty includes maintaining plumbing and sanitary fixtures supplied by the landlord in good and safe working order.

Authority

Sec. 562A.15, Code of Iowa

INSTRUCTION NO. _____

The plaintiff Gumaa Hassaballa must prove all of the following propositions:

1. The defendant was negligent in one or more of the following ways:
 - a. failing to inspect the bathroom sink for damage;
 - b. failing to properly maintain the sink's attachment to the wall;
 - c. failing to respond in reasonable time to complaints about the sink.
2. The negligence was a cause of damage to the plaintiff.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If the plaintiff has proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction No. _____.]

INSTRUCTION NO. _____

You have received evidence of the provisions of a safety codes addressing the duties of landlords in Iowa and specifically Cedar Rapids. Conformity with the provisions of a safety code is evidence that Defendant was not negligent and non-conformity or violations of its provision is evidence that Defendant was negligent. Such evidence is relevant and you should consider it, but it is not conclusive proof.

Authority

Custom - Langner v. Caviness, 238 Iowa 774, 28 N.W.2d 421 (1947)

Manual On Uniform Traffic Control Devices - Gipson v. State, 419 N.W.2d 369 (Iowa 1988)

Safety Code - Porter v. Iowa Power and Light Company, 217 N.W.2d 221 (Iowa 1974)

INSTRUCTION NO. _____

After you have compared the conduct of all parties, if you find the plaintiff, Gumaa Hassaballa, was at fault and the plaintiff's fault was more than 50% of the total fault, the plaintiff, Gumaa Hassaballa, cannot recover damages.

However, if you find the plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of plaintiff's fault.

INSTRUCTION NO. _____

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the plaintiff. Guma Hassaballa and the defendant Woodland Square Investments LLC and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

INSTRUCTION NO. _____

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct. There can be more than one cause of an injury or damage.

INSTRUCTION NO. _____

If you find Gumaa Hassaballa is entitled to recover damages, you shall consider the following items:

Past Medical Expenses. The reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time.

In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions and other medical services, you may consider the amount charged, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense.

Loss Of time - Earnings. The reasonable value of lost time off work from the date of injury to the present time.

Loss Of Future Earning Capacity. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.

Loss Of Full Mind And Body - Past. Loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner.

Loss Of Full Mind And Body – Future. The present value of future loss of function of the body.

Physical And Mental Pain And Suffering - Past. Physical and mental pain and suffering from the date of injury to the present time.

Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort.

Mental pain and suffering may include, but is not limited to, mental anguish, loss of enjoyment of life, and embarrassment.

Physical And Mental Pain And Suffering-Future. The present value of future physical and mental pain and suffering.

The amount you assess for physical and mental pain and suffering in the past and future, loss of earning capacity, loss of function of the body in the past and future cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. _____

In arriving at an item of damage or any percentage of fault you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

INSTRUCTION NO. _____

Punitive damages may be awarded if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence the defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the plaintiff.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future. You may award punitive damages only if the defendant's conduct warrants a penalty in addition to the amount you award to compensate for plaintiff's actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of defendant's conduct that harmed the plaintiff.
2. The amount of punitive damages which will punish and discourage like conduct by the defendant. You may consider the defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the defendant's wealth or ability to pay.
3. The plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the plaintiff.
4. The existence and frequency of prior similar conduct.

INSTRUCTION NO. _____

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

INSTRUCTION NO. _____

I am giving you _____ verdict forms and questions. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict [and answers to questions] must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock ____m. excluding meals or recesses outside your jury room, then it is necessary that only (seven) (six)* of you agree upon the answers to the questions. In that case, the verdict and questions must be signed by all (seven) (six)* jurors who agree.

When you have agreed upon the verdict and answers to questions and appropriately signed it, tell the Court Attendant.

INSTRUCTION NO. _____

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. _____

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

INSTRUCTION NO. _____

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. [Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.]

It is important that we have your full and undivided attention during this trial.

INSTRUCTION NO. _____

Question No. 1: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of the defendant constituted willful and wanton disregard for the rights or safety of another?

Answer "Yes" or "No"

ANSWER:

[If your answer to Question No. 1 is "No" do not answer Question Nos. 2 and 3]

Question No. 2: What amount of punitive damages, if any, do you award?

ANSWER:

[If your answer to Question No. 2 is "None" do not answer Question No. 3]

Question No. 3: Was the conduct of the defendant directed specifically at (name)?

Answer "Yes" or "No"

ANSWER:

INSTRUCTION NO. _____

(Principal or employer) is liable for the punitive damages by reason of the acts of (employee or agent) if one of the following occurred:

1. The [principal or employer] [managerial agent of (principal or employer)] authorized the act and the way it was done; or
2. The [agent] [employee] was unfit and the [principal] or employer [managerial agent of (principal or employer)] was reckless in employing or retaining him; or
3. The [agent] [employee] was employed in a managerial capacity and was acting in the scope of employment; or
4. The [principal or employer] [managerial agent of (principal or employer)] ratified or approved the act.

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

GUMAA HASSABALLA,

Plaintiff,

vs.

WOODLAND SQUARE
INVESTMENTS, L.L.C.

Defendant.

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No. LACV089439

SPECIAL VERDICT

FORM NO. _____

We find the following verdict on the questions submitted to us:

Question No. 1: Was the Defendant, Woodland Square Investments, at fault?

Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer any further questions.]

Question No. 2: Was the fault of the Defendant, Woodland Square Investments, a proximate cause of damage to the Plaintiff?

Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer any further questions.]

Question No. 3: Was the Plaintiff, Gumaa Hassaballa, at fault?

Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer questions No. 4 and 5.]

Question No. 4: Was the fault of the Plaintiff, Gumaa Hassaballa, a proximate cause of his damages?

Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer Question No. 5.]

Question No. 5: Using 100% as the total combined fault of Plaintiff, Gumaa Hassaballa, and Defendant, Woodland Square Investments, which was a proximate cause of Plaintiff's damages, what percentage of such combined fault do you assign to the Plaintiff and what percentage of such combined fault do you assign to the Defendant?

ANSWER: Plaintiff, Gumaa Hassaballa _____ %
 Defendant, Woodland Square Investments _____ %
 TOTAL 100%

[If you find Plaintiff to be more than 50% at fault, do not answer the next question.]

Question No. 6: State the amount of damages sustained by the Plaintiff proximately caused by the Defendant's fault as to each of the following items of damage. Do not take into consideration any reduction of damages due to Plaintiff's fault. If the Plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was proximately caused by Defendant's fault, enter 0 for that item.

ANSWER:

1. Past Medical Expenses \$ _____
2. Future Medical Expenses \$ _____
3. Loss of time—Earnings \$ _____
4. Loss of Future Earning Capacity \$ _____
5. Loss of Full Mind and Body—Past \$ _____
6. Loss of Full Mind and Body—Future \$ _____
7. Physical and Mental Pain and Suffering—Past \$ _____
8. Physical and Mental Pain and Suffering—Future \$ _____

 FOREMAN OR FOREWOMAN *

* To be signed only if verdict is unanimous.

 Juror **

 Juror **

 Juror **

 Juror **

Juror **

Juror **

Juror **

** To be signed by the jurors agreeing thereto after six hours or more of deliberation.